

BLACKFEET – MONTANA PROPOSED WATER RIGHTS SETTLEMENT

WHERE WE ARE

The Blackfeet Tribe, the State of Montana and the United States have been in negotiations for over 20 years to settle the federal reserved water rights claims of the Tribe, its members and allottees. The Parties have recently agreed to release a proposed settlement (called a “Compact”) to the public for review and comment. This proposed Compact would be a full and final settlement of the federal reserved water rights on the Blackfeet Indian Reservation. It seeks to balance a fair recognition of these rights with protections for existing water users who claim rights under State law. If, after public comment, the Tribe and the State agree to go ahead with this Compact (whether as is or in a modified form), it will be submitted to the State legislature for ratification. After that, it will go to Congress for federal approval, and for the authorization and appropriation of funding for tribal development of its water rights and for contributions for measures to mitigate the impacts of tribal development on State law-based water users. The State anticipates making significant contributions to these mitigation efforts as well. After State and congressional approval, the Compact goes to the Tribe for final approval. Finally, the water rights will go to the Water Court to be formally decreed. In the event this negotiated process is unsuccessful, the Tribe’s water rights will need to be resolved in litigation.

PROPOSED COMPACT BASICS

In general, the proposed Compact:

- Provides water from surface flow, groundwater and storage for the Blackfeet Tribe for existing and future tribal water needs.
- Provides protections for all current water users for non-irrigation rights in all affected water basins from the Tribe’s future exercise of its water right.
- Provides protections for all current irrigation uses in Birch Creek and the Badger Creek and Two Medicine River basins and a grace period before Tribal development in Cut Bank Creek and Milk River drainages.
- Sets out a management plan for Birch Creek to maximize both tribal and non-tribal use. The parties are also discussing augmentation and mitigation.
- Provides 50,000 acre-feet from the United States’ share of the St. Mary River basin with protections for the Milk River Project.
- Closes basins to new water appropriations under state law; changes and transfers of water rights can continue and a process will be available authorizing small domestic and stock uses.
- Provides for an administrative structure where the Tribe will administer the Tribal Water Right, the State will administer rights arising under state law, and a Compact Board will referee disputes between the two systems.
- Creates a Compact Board with an administrative process for resolution of any future disputes between Tribal and non-Tribal water users.
- Allocates water stored in Tiber Reservoir for the Tribe to use or market.

BLACKFEET TRIBAL WATER RIGHT

BIRCH CREEK

- 100 cfs from the natural flow of Birch Creek for irrigation use.
- Instream flow of 25 cfs from April 1 to Sept. 1 and 15 cfs from Oct. 1 to March 31. The Tribe may reduce this instream flow but not below 10 cfs.
- Whatever water remains after satisfaction of the Tribe's irrigation and instream flow rights as well as all existing rights arising under State law
- A management plan will be attached as an appendix to the Compact that provides for coordinated management of Birch Creek water for meaningful development for the Tribe while minimizing impacts to off-reservation water users.
- Birch Creek drainage on the Reservation closed to new appropriations under state law, except for small groundwater and stock uses excepted from State law permitting requirements.

BADGER CREEK/TWO MEDICINE RIVER

- The Tribe has a water right to all surface water and groundwater. Current non-Tribal water uses are not subject to a call from new Tribal development. Any non-Tribal water right subsequently purchased by the Blackfeet Tribe becomes part of the Tribal water right, but the Tribe may not administer that right in a way that hurts senior rights arising under State law.
- Instream flow of 20 cfs in both Badger Creek and Two Medicine River.
- The parties are exploring increasing storage in Four Horns Reservoir to increase water availability in the Badger and Birch Creek drainages.
- Blackfeet Irrigation Project will be supplied water from the Tribal water right and will be administered by the BIA (or as provided by Congress).
- Badger Creek and Two Medicine River basins on the reservation are closed to new appropriations under state law, except for small groundwater and stock uses excepted from State law permitting requirements.

CUT BANK CREEK AND MILK RIVER

- The Tribe has a water right to all surface water and groundwater. Current non-Tribal non-irrigation water uses are not subject to a call from new Tribal development. Any non-Tribal water right subsequently purchased by the Blackfeet Tribe becomes part of the Tribal water right, but the Tribe may not administer that right in a way that hurts senior rights arising under State law.
- Irrigation uses on Cut Bank Creek and the Milk River are subject to a call for Tribal irrigation development. The Tribe will provide a 10 year grace period prior to new development of its water right not using exclusively stored or imported water.
- Instream flow of 2 cfs in both Cut Bank Creek and the Milk River.
- The Milk River on the reservation and Cut Bank Creek are closed to new appropriations under state law, except for small groundwater and stock uses excepted from State law permitting requirements.

ST. MARY RIVER

- 50,000 acre-feet from the United States' share of the St. Mary River basin.
- The Milk River project protected from injury.
- Tribe entitled to develop storage to use or market this right.
- St. Mary River basin on the Reservation closed to new appropriations under state law, except for small groundwater and stock uses excepted from State law permitting requirements.

CONTRIBUTIONS TO SETTLEMENT

Parties are discussing:

- State funds for mitigation including infrastructure improvements for irrigation systems to off-set impact from Tribal development, particularly on Birch Creek;
- State and Federal funds to augment water availability for Tribal and other uses through increased storage in Four Horns Reservoir and elsewhere;
- Federal funding for Tribal development on the reservation and new storage, including on the St. Mary River.